

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GEARLEAN CLAYTON

Claimant

VS.

PLAZA WEST REGIONAL HEALTH CENTER

Respondent

AND

ROYAL & SUN ALLIANCE INSURANCE COMPANY

Insurance Carrier

Docket No. 1,001,587

ORDER

Claimant appeals Administrative Law Judge Bryce D. Benedict's February 19, 2002, preliminary hearing Order.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for temporary partial disability benefits from January 10, 2002. The ALJ found claimant suffered a right shoulder injury while mopping the floor for respondent on January 9, 2002. But the ALJ found claimant failed to prove she had also injured her back from the same mopping incident. Claimant's request for temporary partial disability benefits was denied because a right shoulder injury is a scheduled injury and the scheduled injury statute does not provide for the payment of temporary partial disability benefits.

Claimant appeals and contends she proved through her testimony and the medical treatment records admitted into the preliminary hearing record that she not only injured her right shoulder but also injured her back while working for the respondent on January 9, 2002. Accordingly, since claimant sustained a whole body injury and not just a scheduled injury, claimant contends she is entitled to temporary partial disability benefits.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, and considering the parties' briefs, the Board makes the following findings and conclusions:

¹ See K.S.A. 44-510e.

Claimant is employed as a housekeeper for the respondent. On January 9, 2002, claimant testified she was mopping the floor while working for the respondent and suddenly started feeling, "real bad throbbing, burning pain in my right shoulder and my back."² Claimant notified respondent of the incident and respondent had claimant complete an Employee Incident/Accident Report. This report was admitted into the preliminary hearing record and claimant testified she completed the report herself and the signature on the report was hers. Claimant described the incident in her report, "I was mopping the floor and I felt real bad throbbing, burning pain in my shoulder."³ The claimant was also asked in the Employee Incident/Accident Report the question of what part of the body she injured. Claimant only noted the right shoulder and did not note her back.

Respondent referred claimant to St. Francis Hospital Medical Center's Emergency Department for examination and treatment recommendations. Claimant was seen on January 9, 2002, with right shoulder complaints. The emergency physician's diagnostic impression was right shoulder strain. Claimant was prescribed medication, physical therapy for the shoulder pain, placed on limited duty of no repetitive use of the right arm and no work above shoulder level. The physical therapy treatment records also indicated claimant received treatment only for the right shoulder.

Claimant returned to the St. Francis Hospital Emergency Department for a followup examination on January 29, 2002. The January 29, 2002 admitting medical record indicates an admitting diagnosis to recheck right shoulder and back. But the treating physician Daniel T. Mead's January 29, 2002 Emergency Room Report indicates claimant had only right shoulder discomfort complaints. The doctor only examined claimant's right shoulder and his only diagnosis was right shoulder tendinitis. Claimant was discharged and referred for additional physical therapy, advised to ice the injury and to followup with an orthopedist. Claimant was also discharged to limited duty of no work above shoulder level and to limit mopping to three to four hours per day at 30 minute intervals.

Claimant testified she notified the emergency department physician both on January 9, 2002, and January 29, 2002, that she injured both her right shoulder and her back mopping on January 9, 2002. But as noted above, only the January 29, 2002, emergency department's medical record referenced claimant injuring her back. Additionally, although the back is mentioned in the admitting January 29, 2002 emergency department record, the physician's examination record does not indicate the claimant made any back complaints. The emergency department physician also did not make a diagnosis, a treatment recommendation, or restrictions relating to claimant's back.

² Prel. Hrg. Trans., February 13, 2002, p. 9.

³ Prel. Hrg. Trans., February 13, 2002, p.23 and resp.'s Exhibit A.

Respondent's human resources director, Beverly Adams also testified before the ALJ at the preliminary hearing. Ms. Adams acknowledged that claimant reported to her on January 9, 2002, an injury to her right shoulder and completed an Employee Incident/Accident Report. But Ms. Adams further testified that claimant only reported a right shoulder injury and did not report a back injury.

The Board concludes claimant failed to prove that in addition to injuring her right shoulder she also injured her back while mopping for respondent on January 9, 2002. Respondent's internal incident report, respondent's human relation director's testimony, and the emergency department's medical records failed to indicate that claimant made any complaints of pain and discomfort in her back after the January 9, 2002, incident. As a result, the emergency department physicians did not examine, make any treatment recommendations, or restrict claimant's work activities for any injury except for the injury to claimant's right shoulder.

Accordingly, since claimant's right shoulder injury is a scheduled injury claimant is not entitled to temporary partial disability benefits.⁴

As provided by the Workers Compensation Act, preliminary hearing findings are not final but are subject to modification upon a full hearing on the claim.⁵

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Bryce D. Benedict's February 19, 2001, preliminary hearing Order is affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2002.

BOARD MEMBER

c: Frederick J. Patton, II, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

⁴ See K.S.A. 44-510d(b) and Ledbetter v. Constar Plastics, WCAB Docket No. 205,252 (October 1996).

⁵ See K.S.A. 44-534a(a)(2).